

200724037



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

MAR 21 2007

T:EP: RA:T: A2

In re:

Date

X =

Y =

Dear

This letter constitutes notice that conditional approval has been granted for your request for a 10-year extension for amortizing the Plan's unfunded liabilities described in section 412(b)(2)(B) of the Internal Revenue Code ("Code") and section 302(b)(2)(B) of the Employee Retirement Income Security Act of 1974 ("ERISA"). The extension is granted for the amortization period for amortizing unfunded liabilities of the Plan for the plan year beginning October 1, . The application for the extension was filed on Date 1, a date after June 30, . The Plan is a multiemployer plan.

The extension of the amortization periods of the unfunded liabilities of the Plan have been granted in accordance with section 412(e) of the Code and section 304(a) of ERISA. Section 412(e) of the Code and section 304(a) of ERISA authorize the Secretary to extend the period of time required to amortize any unfunded liability (described in section 412(b)(2)(B) of the Code and section 302(b)(2)(B) of ERISA) of a plan for a period of time (not in excess of 10 years) if the Secretary determines that such extension would carry out the purposes of ERISA and would provide adequate protection for participants under the plan and their beneficiaries and if the Secretary determines that the failure to permit such extension would (1) result in (A) a substantial risk to the voluntary continuation of the plan, or (B) a substantial curtailment of pension benefit levels or employee compensation, and (2) be adverse to the interests of plan participants in the aggregate.

Section 101 of Reorganization Plan No. 4 of 1978, 1979-1 C.B. 480, transferred the authority for issuing rulings under section 304(a) of ERISA from the Secretary of Labor to the Secretary of the Treasury. Accordingly, the amortization periods for the unfunded liabilities of the Plan are extended as described above under section 412(e) of the Code and section 304(a) of ERISA.

Subsequent to market value losses of X% and Y% in the and plan years, the Plan's assets fell below its accrued liability in the plan year. In response, contributions to the Plan were significantly increased and Plan Trustees eliminated an early retirement incentive program and a partial lump sum benefit. However, despite these actions to improve the funded status of the Plan, projections submitted by the Plan Trustees indicate that the Plan will have a funding deficiency by the end of the plan year beginning October 1, unless employer contribution rates are increased by 400%. The Plan Trustees have represented that an additional 400% increase in employer contribution rates is unattainable.

If, however, the requested amortization period extension was to be granted, projections of the funding standard account show no future funding deficiencies. Accordingly, failure to permit the extension would result in a substantial risk to the voluntary continuation of the Plan and would be adverse to the participants in the aggregate. However, because the prospects for recovery are uncertain we are granting the extension subject to the conditions listed below:

- (1) A credit balance is maintained in the funding standard account that is at least as large as the "pseudo credit balance," for the plan years beginning October 1, through October 1, . For this purpose, the "pseudo-credit balance" means a hypothetical credit balance developed by determining the reduction in the net amortization charge for the extended base each year that is solely due to the difference between the valuation interest rate and the interest rate under section 6621(b) of the Code, and amortizing each such reduction over a period of 15 years using the valuation interest rate. The resulting amortization amounts are accumulated with interest at the valuation interest rate to derive the "pseudo credit balance" at each valuation date.
- (2) The Plan's funded ratio, calculated by dividing the Plan's market value of assets by its actuarial accrued liability (computed using the unit credit method and the Plan assumptions as of October 1, , is:
 - (a) no less than 87% for each valuation date from October 1, through October 1, , inclusive;
 - (b) for each valuation date subsequent to October 1, and, while the extension remains in effect, no less than 1% greater than the floor funded ratio as of the previous valuation date. (For example, because the floor

funded ratio as of October 1, is 87%, the funded ratio must be at least 88% as of October 1, and 89% as of October 1, and

- (3) For each plan year that the extension remains in effect, starting with the plan year beginning October 1, a copy of the actuarial valuation report for each plan year will be provided by July 15 of the second following calendar year to the address listed below:

Internal Revenue Service
Attn: SE:T:EP:RA:T:A2
1111 Constitution Avenue, N.W., PE
Washington, DC 20224

You accepted these conditions in a letter dated March 2, 2007. If any one of these conditions is not satisfied, the approval to extend the amortization periods for amortizing the unfunded liabilities would be retroactively null and void. However, the Service will consider modifications of these conditions especially in the event that unforeseen circumstances beyond the control of the Plan may cause the actual experience of the Plan to fail the funded ratio condition. An example of such an unforeseen circumstance would be market fluctuations which affect the value of the Plan's assets. Of course, any request for a modification would be considered another ruling request and would be subject to an additional user fee.

Your attention is called to section 412(f) of the Code and section 304(b) of ERISA as in effect for plan years beginning prior to January 1, 2008¹, which describe the consequences that would result in the event the Plan is amended to increase benefits, change the rate in the accrual of benefits or to change the rate of vesting, while the amortization extension remains in place. Please note that any amendment that increases liabilities for a profit sharing plan or any other retirement plan (whether qualified or unqualified) maintained by the Trustees for the Plan and covering participants of the Plan to which this ruling applies, would be considered an amendment for purposes of section 412(f) of the Code and section 304(b) of ERISA. Similarly, the establishment of a new profit sharing plan or any other retirement plan (whether qualified or unqualified) maintained by the Trustees for the Plan and covering participants of the Plan to which this ruling applies, would be considered an amendment for purposes of section 412(f) of the Code and section 304(b) of ERISA.

Accordingly, in the event the Plan is amended to increase benefits, change the rate in the accrual of benefits or to change the rate of vesting, while the amortization extension remains in place, the extension of time granted by this letter would not apply to any plan

¹ Section 412(c)(7) of the Code and section 302(c)(7) of ERISA provide similar language for plan years beginning on or after January 1, 2008.

year ending on or after the date on which the amendment is adopted (hereinafter, the "**Amendment Year**"). In particular, effective with the valuation date in the **Amendment Year**, the balance of each extended amortization base would be redetermined as an amount equal to the balance, if any, that each extended base would have had if the extension had not been granted (hereinafter, the "**Redetermined Balance on Account of 412(f)**"). In addition, there would be a one-time charge to the funding standard account on account of each extended base equal to the excess of (A) over (B) where

(A) would be an amount equal to the theoretical balance of the extended base determined using the actual charges to the funding standard account on account of such base and using the valuation interest rate and

(B) would be the **Redetermined Balance on Account of 412(f)**

Furthermore, effective with the Amendment Year, the annual amortization charge for each extended base would be redetermined by amortizing the **Redetermined Balance on Account of 412(f)** over the remaining amortization period, if any, redetermined without regard to extensions previously granted under section 412(e) of the Code². Such charges would be redetermined using the Plan valuation interest rate. Of course, if the **Redetermined Balance on Account of 412(f)** of an extended base is \$0, there would be no amortization charge with respect to the base.

For example, assume, as of October 1, 2004, that an amortization extension was granted for hypothetical amortization base H. Assume that as of that date, base H had an unamortized balance of \$100,000 and a remaining amortization period of 10 years before extension, and 20 years after extension. Assume further that the valuation interest rate is 8% for all applicable years, the section 6621(b) rate is 3% for all applicable years and that an amendment is adopted increasing benefits in 2007 (i.e., the **Amendment Year** is 2007). Accordingly, effective October 1, 2007, the **Redetermined Balance on Account of 412(f)** of H would be \$77,590, the remaining amortization period would be 7 years, and the annual amortization charge would be \$13,799³. In addition, there would be a one-time charge to the funding standard account on account of H for the plan year beginning October 1, 2007, of \$26,560⁴. (This

² Generally, this redetermined amortization charge will be equal to the amortization charge of the extended base immediately before the extension was granted.

³ If the extension had not been granted, the amortization charge with respect to H would have been \$13,799 (i.e. the amortization payment for a 10 year \$100,000 amortization base determined at 8%), the remaining amortization period would have been 7 years (i.e. the ten year remaining period before the extension was granted as of October 1, 2004, less the three years that elapsed between 2004 and 2007) and thus, the **Redetermined Balance on Account of 412(f)** would have been the present value (at 8%) of the 7 remaining payments of \$13,799, or \$77,590.

⁴ Under the assumed facts, the actual charge to the funding standard account on account of H is \$6,526 for each of the 2004, 2005, and 2006 plan years (i.e. the amortization payment on a 20-year base determined at 3%) and the theoretical balances of H (as described in (A) above) would be \$101,278, \$102,659, and \$104,150 at the beginning of the 2005, 2006, and 2007 plan years respectively. Accordingly, the charge as of the beginning of the 2007 plan year on account of H would be \$104,150 less the **Redetermined Balance on Account of 412(f)** of \$77,590, or \$26,560.

one-time charge would be as of the beginning of the plan year, and would be assessed interest at the valuation rate of 8% until the end of the plan year).

Your attention is also called to section 211(b)(2) of the Pension Protection Act of 2006 (P.L. 109-280; "PPA"), generally effective for plan years beginning on or after January 1, 2008, which limits the application of the rules of section 412(e) of the Code and section 304 of ERISA, including the use of the rate of interest determined under section 6621(b) of the Code, to extensions granted with respect to applications filed on or before June 30, 2005. Accordingly, because your request for an extension was made after June 30, 2005, the balance of each extended amortization base will be redetermined as of October 1, 2008, as an amount equal to the balance for each base rolled forward with the valuation rate of interest, but reflecting the actual charges to the funding standard account (hereinafter, the **"Redetermined Balance on Account of PPA"**). Thus, effective with the plan year beginning October 1, 2008, the amortization charge for each extended base will be determined by amortizing the **Redetermined Balance on Account of PPA** over the remaining (extended) period, using the valuation rate.

For example, assume that an amortization extension was granted as of October 1, 2004, for hypothetical amortization base J. Assume that as of that date, base J had an unamortized balance of \$50,000 (determined without regard to PPA) and a remaining amortization period of 5 years, before extension, and 15 years after extension. Assume, in this example, that the valuation rate is 8% for all applicable years, the section 6621(b) rate is 4% for all applicable years, and that no amendments have been adopted increasing benefits within the meaning of section 415(f) of the Code. Accordingly, effective October 1, 2008, the **Redetermined Balance on Account of PPA** of J would be \$47,760⁵, the remaining amortization period would be 11 years, and the annual amortization charge (using the valuation interest rate of 8%) would be \$6,194.

We have sent a copy of this letter to the

and to your
authorized representative pursuant to a power of attorney on file in this office.

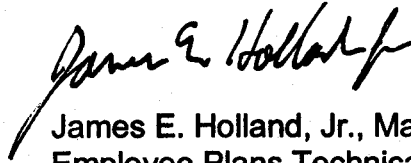
⁵ Reflecting the valuation interest rate of 8% and the actual amortization charges determined using the assumed interest rate of 4% under section 6621(b) of the Code, the annual beginning-of-year charge to the funding standard account on account of base J before October 1, 2008 would be \$4,324. Assuming interest on the outstanding balance at 8% per year, the outstanding balance of base J would be \$49,503, \$48,966, \$48,386, and \$47,760 at the beginning of the 2005, 2006, 2007 and 2008 plan years, respectively. The difference between the **Redetermined Balance on Account of PPA** and the actual outstanding balance of each base at the end of the 2007 plan year is generally equal to the balance in the Accumulated Reconciliation Account that would otherwise have been reported as of the first day of the 2008 plan year.

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If you require further assistance in this matter, please contact

Sincerely yours,

A handwritten signature in dark ink, appearing to read "James E. Holland, Jr.", written in a cursive style.

James E. Holland, Jr., Manager
Employee Plans Technical